



September 14, 2007

Form 990 Redesign, ATTN: SE:T:EO
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224

Re: Form 990 Redesign, Public Comments

Dear Sir or Madam,

Thank you for providing an opportunity for public comment on the proposed revisions to Form 990. The comments provided in this letter are intended to relate specifically to those provisions of the proposed revised 990 and its attachments that affect exempt organizations that hold conservation easements on historic properties.

The National Trust for Historic Preservation (National Trust) is the only nonprofit organization chartered by Congress to promote public participation in the preservation of America's heritage. For more than 30 years, the National Trust has actively encouraged the use of conservation and preservation easements to preserve historic places. Pursuant to our mission and our 1949 Congressional Charter, the National Trust has published reference materials on easements, and has provided advice and assistance to hundreds of other preservation and conservation organizations—mostly at the state and local level—that acquire and hold easements to protect historic sites. Over that same period, the National Trust has itself acquired approximately 100 easements, protecting a variety of historic sites in 21 states and the District of Columbia.

As a preliminary matter, the National Trust wishes to endorse the comments provided to the Service by the Land Trust Alliance, which is the leading organization dedicated to the effectiveness and sustainability of the nation's land trusts and their use of conservation easements. Given its experience and its national role in promoting best practices for organizations holding conservation easements, the National Trust believes that the Land Trust Alliance's comments regarding the provisions of the proposed 990 revision relating to conservation easements should be given appropriate consideration by the Service.

The following comments are provided by the National Trust considering the specific circumstances of exempt organizations that hold conservation easements that protect historic structures, buildings, and historically important land areas (herein described as "preservation easements"):

Form 990, Part VII - Statements Regarding General Activities

Line 2: Did the organization receive or hold a conservation easement, including easements to preserve open space, the environment, historic land areas or historic structures? If yes, complete Part VIII of Schedule D and Schedule M.

Comment: The National Trust agrees with the Land Trust Alliance that this language should be clarified (or at a minimum that the Instructions be clarified) as to whether this reporting requirement applies only to easements for which a tax deduction was sought by the donor. Unless clarified, some preservation organizations may assume that this reporting requirement only applies to conservation easements for which deductions are sought as a qualified conservation contribution under IRC 170(h), while others may assume that the requirement applies to *any* conservation easement, even those purchased by the organization, or imposed by the organization as a condition of sale of a historic property. This will lead to an inconsistency in reporting.

The National Trust also agrees with the Land Trust Alliance that the reporting requirement should only apply to *perpetual* conservation easements. A number of historic preservation organizations have accepted or otherwise hold *term* easements, which do not qualify for treatment under IRC 170(h), and which impose different obligations for the easement-holding organization. (As an example, many recipients of grants from the National Park Service or state agencies for rehabilitation or restoration of historic structures may be required to give term conservation easements or similar restrictions on the property in question to the National Park Service or to other qualified preservation organizations, with the term of the easement reflecting the size of the grant amount.)

Draft Form 990, Schedule D, Part VIII

Question 2: Complete this table if the organization held a qualified conservation contribution in the form of a conservation easement on the last day of the tax year.

Comment: As noted by the Land Trust Alliance, this language is inconsistent with the language of Part VII, Line 2, since the former uses the generic term “conservation easement” and not conservation easements qualifying as a qualified conservation contribution. The Service needs to decide which type of easement is to be the basis of the report, and use consistent language throughout.

Draft Form 990, Schedule D, Part VIII

Question 2: Table, Line (b): Total acreage subject to easements.

Comment: While this question may be relevant for conservation easements on open space, farmland, and other land areas (i.e. easement that further the purposes stated under IRC 170(h)(4)(A)(i)-(iii)), it is not necessarily relevant with respect to easements that focus primarily on historic structures, where the public value is based on the historic or architectural significance—and *not* the acreage—of the real property protected by the easement. We seriously question the value of requiring exempt organizations holding conservation easements protecting historic structures to tally annually the acreage of such easements, and we recommend that the Service consider excepting from this reporting requirement easements for which the primary purpose is to protect historic structures.

Draft Form 990, Schedule D, Part VIII

Question 2: Table, Line (f): Number of easements on land within or adjacent to a residential development.

Comment: We strongly concur with the Land Trust Alliance that this reporting obligation is confusing, ill-defined, and imposes an unreasonable burden on easement-holding organizations to identify residential developments that may be adjacent to an easement-protected property but for which the easement-holding organization has no responsibility or control. If the purpose of the question is to identify questionable easement donations such as the situation in *Turner v. Commissioner*, 126 T.C. No. 16; No. 5165-04 (16 May 2006), we believe that there are more appropriate ways to identify such circumstances, including additional questions on Form 8283, as suggested by the Land Trust Alliance.

This question is particularly inappropriate for conservation easements on historic structures, many of which actually protect residential properties in towns and cities—properties which are, by definition, “within or adjacent to a residential development.” In addition, many preservation and conservation organizations—including our own—have accepted conservation easements in rural areas in order to protect a particular property against encroaching development, and the fact that development stops at the borders of the easement-encumbered property actually reflects the public value of the easement.

Draft Form 990, Schedule D, Part VIII

Question 5: Staff hours devoted to monitoring or enforcing easements during the year.

Comment: As is the case with land trusts, many historic preservation organizations operate their programs and activities in reliance on volunteer support, and question 5 may actually result in an under-reporting of the time, attention, and value of services provided by exempt organizations responsible for in monitoring, administering, and enforcing conservation easements. We suggest that reporting exempt organizations should be able to indicate that substantial services in monitoring and enforcing easements have been provided by volunteers.

Draft Form 990, Schedule M, Part I


Line 14: Qualified conservation contribution (historic structures).

Line 15: Qualified conservation contribution (other)

Comment: We think it important to note that many conservation easements held by historic preservation organizations protect both historic structures (i.e. certified historic structures, as defined in the Line 14 Instructions), *and* other types of land areas (both natural, recreational, agricultural, and historically important) as defined in the Line 15 Instructions. We suggest that the instructions for Schedule M acknowledge this, and state that easements should be categorized on the basis of the *primary* value to be protected by the easement. We also note that for purposes of Form 990, Part IV, Line g, and Part VI, conservation easements are generally not treated as assets to a donee organization, since any value as a non-cash contribution can not recouped by sale (and in fact may be offset by the public obligations the organization incurs by promising to monitor and enforce the easement in perpetuity). An easement contribution, consequently, is a very different type of contribution than other types of non-cash contributions that may have a true cash value to the recipient exempt organization, particularly if such non-cash contributions include property that can be sold to provide actual revenues for the organization.

Thank you for your consideration of the foregoing comments.

Sincerely,



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